

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED  
SCHOOL DISTRICT AND THE KEEGAN  
ACADEMY.

OAH CASE NO. 2012080512

ORDER DENYING MOTION TO  
DISMISS

On August 17, 2012, Parent on behalf of Student filed a due process hearing request (complaint) naming the Temecula Valley Unified School District (District) and the Keegan Academy (Academy) as respondents.

On October 2, 2012, District, for itself and Academy, filed a motion to dismiss. On October 8, 2012, Student filed a notice of intention to file opposition, but in light of the ruling on this motion and the pending prehearing conference, this order is issued without the necessity of opposition.

District moves to dismiss Student's claims for the 2012-2013 school year on the grounds that (i) parents do not reside in District boundaries, and (ii) Student no longer attends a charter school "operating as a school of the District for purposes of special education," and submits the declaration of Sonja Clause in support. These contentions require factual inquiries that cannot be decided without admission and weighing of evidence, which will be performed at the hearing.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure. Here, the motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: October 08, 2012

/s/

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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings

